IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

LINDSEY K. SPRINGER	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 4:06-cv-00156-GKF-FHM
	)	
DOUGLAS HORN, *et. al.*	)	
	)	
Defendants.	)	

DEFENDANTS' RESPONSE TO SPRINGER'S MOTION TO RECONSIDER DISMISSAL ON SUMMARY JUDGMENT GROUNDS DUE TO MATERIAL FALSE STATEMENTS

Plaintiff, Lindsey K. Springer, moves this Court to reconsider its orders finding that two Assistant United States Attorneys ("AUSAs") and 11 IRS Special Agents are immune from suit in this purported *Bivens* action. (Doc. # 205). This Court directed the defendants to respond to Springer's motion by February 8, 2011. (Doc. # 207). Springer argues that the defendants could not investigate and prosecute him for tax offenses because the Secretary of the Treasury did not authorize them to do so. Springer's arguments are frivolous and his motion should be denied.

I. Statement of Facts

Springer's lawsuit stems from the 2005 execution of a search warrant at his residence as part of an investigation into his tax activities. *See Springer v. Albin*, 2010 WL 4027821 (10th Cir., Oct. 15, 2010) (reciting the facts of this action). In November 2009, a jury found Springer guilty of six tax-related counts of tax evasion, conspiracy to defraud the United States, and failure to file a tax return. *See United States v. Springer*, Case No. 4:09-cr-00043-SPF (N.D. Okla.), Jury Verdict (Doc. # 245, Nov. 16, 2009), Judgment (Doc. # 337, Apr. 28, 2010). As he argues here, Springer argued in his criminal case that the AUSA and Justice Department attorney prosecuting him (as well as an IRS agent) had no authority to take any action outside the District of Columbia. *See Id.*, Motion for New Trial (Doc. # 262, Dec. 8, 2009). In his criminal case, Judge Friot rejected Springer's argument on the merits in addition to the fact that he untimely raised the issue. *See Id.*, Order (Doc. # 293, Jan. 28, 2010).

Springer brought this action on March 14, 2006, against two AUSAs and 11 IRS Special Agents. (Doc. # 2). On November 25, 2008, the Court granted the defendant AUSAs' motion for summary judgment, finding that the AUSAs were immune from suit on the basis of prosecutorial immunity (for AUSAs Horn and Nelson) and qualified immunity (for AUSA Nelson).[1] (Doc. # 150). The Court denied the defendant IRS agents' motion for summary judgment and subsequent motion to amend judgment under Fed. R. Civ. P. 59(e). (Docs. # 172, 185). The defendant IRS agents timely appealed. *Albin*, 2010 WL 4027821 at *3-5.

The Court of Appeals held "that there was no clearly established law holding that a theft of money during the execution of a valid search warrant violates the Fourth Amendment." *Albin*, 2010 WL 4027821 at *6. Accordingly, the Court of Appeals held that the defendant agents were entitled to qualified immunity from suit and remanded the case back to this Court to enter judgment in favor of the defendant agents. *Id.* at *8. Following the Court of Appeals' mandate, this Court entered a final judgment in favor of all of the defendants on December 20, 2010. (Doc. # 206).

[1] Springer filed a motion to reconsider the Court's order granting summary judgment to the AUSAs on December 5, 2008, which the Court denied three days later. (Doc. # 152, 153).

II. Argument

As an initial matter, Springer fails to address how this Court could reconsider its judgment in favor of the defendant IRS agents. The Court of Appeals "remand[ed] for the court to enter judgment in favor of the agents." *Albin*, 2010 WL 4027821 at *8. The "mandate rule" requires a lower court to "comply strictly with the mandate rendered by the reviewing court." *Colorado Interstate Gas Co. v. Natural Gas Pipeline Co. of America*, 962 F.2d 1528, 1534 (10th Cir. 1992); *see also Huffman v. Saul Holdings Ltd. P'ship*, 262 F.3d 1128, 1132 (10th Cir. 2001). The Court of Appeals' mandate required judgment in favor of the defendant IRS agents, and this Court is not free, absent an "extraordinary situation," to alter the judgment mandated by the Court of Appeals. *Colorado Interstate Gas*, 962 F.2d at 1534. Given that his arguments have already been rejected by the judge in his criminal case, Springer has failed to demonstrate any circumstance, much less an extraordinary situation, to disturb the Court of Appeals' mandate.

Springer's argument also fails on the merits. Springer contends that the AUSAs and IRS agents are not delegates of the Secretary of Treasury and that they cannot exercise any authority outside the District of Columbia. Springer's argument is frivolous and should be summarily denied. *See United States v. Dawes*, 161 Fed. Appx. 742, 746 (10th Cir. 2005) (unpublished) (holding that similar argument was frivolous and not meriting further comment, citing *Lonsdale v. United States*, 919 F.2d 1440, 1448 (10th Cir. 1990)). The Justice Department is the agency responsible for conducting criminal trials on behalf of the United States. 28 U.S.C. §§ 515, 516. Moreover, the United States Attorneys for each district are responsible for prosecuting "all offenses against the United States", which includes federal tax offenses. 28 U.S.C. § 547(1). Last, IRS Special Agents are authorized to execute search warrants. 26 U.S.C. § 7608(b).

Springer's contention that these government officials cannot operate outside the District of Columbia is plainly false.

III. Conclusion

Springer is attempting to use this motion to litigate issues he knows to be without merit. The Court should not condone Springer's attempt and consequently, his motion for reconsideration should be denied.

Dated: January 25, 2011.

Respectfully submitted,

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that the foregoing **DEFENDANTS' RESPONSE TO SPRINGER'S MOTION TO RECONSIDER DISMISSAL ON SUMMARY JUDGMENT GROUNDS DUE TO MATERIAL FALSE STATEMENTS** was filed with the Clerk of the Court electronically today, January 25, 2011, such that a service copy was sent by way of the electronic filing system to all parties who have arranged for electronic service of filings. The foregoing has also been served on the non-CM/ECF participants in this civil action by mailing a true and correct copy thereof by first-class mail, postage prepaid, to the following:

Lindsey K. Springer, individually and as Co-Trustee of the S.L.C.A. Family Trust
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